

FBI Statement on Mortgage Fraud in Florida and the Significance of a Notary Journal

By

Ronda Heilig, FBI Mortgage Fraud Program Manager
(April 25, 2006)

“The state of Florida is ranked in the top ten states nationally for numbers of suspicious activity reports relating to mortgage fraud filed by federally insured banking institutions. The state of Florida also is among the top ten states in the nation for the number of pending FBI mortgage fraud cases.

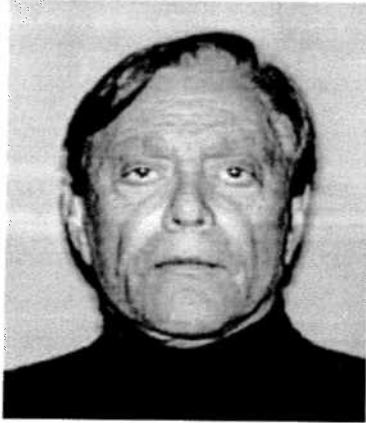
In response to the question of whether a requirement for Notaries Public to keep journal records would assist the FBI in detecting and investigating mortgage fraud cases, yes, keeping a record would provide important evidence as to the extent of the services actually rendered by the Notary Public on a particular occasion and whether the Notary Public's signature and/or seal is fraudulent. Additionally, the journal would provide important evidence of the identity of who actually appeared before the Notary Public. Even better identifying evidence would be available if the Notary were required to capture the signer's thumbprint in the journal.”

[<<Back](#)



Men Accused of Missing Palm Springs Man's Murder in Court

Updated: March 27, 2009 11:38 AM EDT



Cliff Lambert, 74, was reported missing in Dec. 2008.

KESQ.com News Services

INDIO - A first-degree murder charge was filed today against a 26-year-old man who is among five defendants accused in the slaying of a 74-year-old Palm Springs retiree to gain access to his wealth.

Miguel Adolfo DeLeon Bustamante, who was previously charged with burglary and possession of stolen property, pleaded not guilty this afternoon to the murder charge, which carries special circumstance allegations of murder for financial gain and murder during the commission of burglary.

The same charges were also filed Thursday against San Francisco-based attorney David Replogle, 60, alleged con man Kaushal Niroula, 27, Daniel Carlos Garcia, 26, and Russell Herbert Manning, who remains a fugitive.



Kaushal Niroula, 27, (left) and David Replogle, 60, (right) are two of three men charged with murdering a missing 74-year-old Palm Springs man.

The special circumstance allegations give prosecutors the option to pursue death sentences should the men be convicted of murdering Clifford Lambert, who was reported missing by a friend last Dec. 7.

A decision on whether to seek the death penalty against the five defendants will be made later in the case.

Replogle, Niroula and Garcia, who are being held without bail, previously pleaded not guilty to the murder count and charges stemming from the fraudulent sale of the victim's home and the alleged theft of money from his accounts and items from the residence.

The four men were in court this afternoon for a felony settlement conference -- an informal discussion to discuss a possible resolution to a case -- but the proceeding was reset for April 10 by Judge Thomas N. Douglass.

A warrant has been issued for the arrest of Manning, a 67-year-old San Francisco art dealer.

Authorities believe Lambert was killed on or about Dec. 6 during a burglary, but they have not revealed whether the victim's body was found.

"We believe the evidence shows there was a murder," said Michael Jeandron of the District Attorney's Office.

Defense attorney John Dolan, who represents Replogle, said outside the courtroom that Lambert's body has not been found.

"I haven't seen any crime scene evidence," Dolan said. "I haven't seen any physical evidence."

Dolan said Replogle is a lawyer who is in "good standing with the State Bar" and was "caught up in a scam."

The attorney claimed that Replogle represented Niroula in a sexual assault lawsuit against Lambert. Niroula alleged that Lambert sexually assaulted him, Dolan said.

Replogle created a settlement agreement between the two, which Niroula brought to Lambert for him to sign in Palm Springs before the retiree went missing, according to Dolan.

The other men's lawyers declined to comment on the case.

Lambert was reported missing on Dec. 7 by a friend, who had last seen him on Nov. 30, police said. The friend told police that he received a voice mail message from Lambert on Dec. 4 asking for a call back but got no answer when he did so.

Detectives went to Lambert's home in the 300 block of Camino Norte and found the mailbox full and his silver 2004 Mercedes-Benz missing from the driveway.

Palm Springs police Detective Simon Min, who prepared a declaration in support of an arrest warrant, said that shortly after Lambert went missing, investigators learned the retiree's house was quickly being sold for an amount "significantly less than the value of the home."

Min wrote that Replogle forged Lambert's signature to create a power of attorney document and used his own fingerprint to notarize them, which San Francisco police traced back to Replogle.

That document, which was created in San Francisco, was then used to withdraw money from Lambert's accounts and in the sale of his home, the detective said.

Niroula's name is on the sale of the home for \$298,000 and on other notary documents, according to the declaration. A judge subsequently halted the sale of the home when police began investigating Lambert's disappearance.

Garcia was in possession of Lambert's debit card and was seen at several San Francisco and Palm Springs banks withdrawing varying amounts several times last December, according to Min.

Several large sums were also apparently wired from Lambert's account to Niroula in an amount totaling \$210,509 between Dec. 11-12, according to Min.

Niroula paid Bustamante \$30,000 to "clean out" Lambert's home and move the retiree's vehicle to his home in Daly City, according to the declaration.

Bustamante told investigators he had met Niroula and befriended him while working at the Jet Bar in San Francisco, Min wrote.

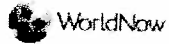
On Jan. 7, police responded to a report that someone was stealing items from Lambert's home and intercepted a U-Haul truck being used to move the property, according to Min.

The investigation led police to Bustamante, who was staying at the Motel 6 Downtown Palm Springs. He admitted to investigators he was "at Lambert's residence attempting to 'clean it out'" and take the property to San Francisco, Min wrote.

During an interview with investigators, Bustamante named the four defendants "as subjects involved in Clifford Lambert's disappearance," according to Min. The men are all connected to Niroula, who previously dated Garcia and is currently dating Replogle, Min wrote.

Both Manning and Niroula were out on bail on a felony case in Northern California when the power of attorney was signed over to them, according to Min.

Niroula, a Nepalese citizen in the United States on a student visa, has two active felony theft and fraud cases in Marin and San Francisco counties. Manning, who is an art dealer, and Niroula are both suspects in one of those cases.



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Eric Davis - Notary article

From: [REDACTED]
To: <edavis@house.mi.gov>
Date: 3/12/2008 5:27 PM
Subject: Notary article

Eric,

The article below from the Sacramento Bee has a good quote from a law enforcement official regarding the journal. It's an unfortunate portrayal of notaries, but reinforces the idea that we need strict standards of conduct for notaries, including proper record-keeping. Scroll down to highlighted/underlined part for journal info:

Outlaw notaries making mark amid real estate crisis

By Christina Jewett - cjewett@sacbee.com
Published 12:00 am PDT Tuesday, March 11, 2008

Detectives and prosecutors sorting through the criminal rubble of the real estate collapse are finding a surprising trend: The notary public is, in some cases, the public enemy.

Investigators in Sacramento, the Bay Area and Los Angeles say real estate frauds can hinge on a mastermind's ability to find a complicit notary, a person who is supposed to attest to the identity and presence of a person signing a sensitive document.

In Sacramento and El Dorado counties, at least six women have been arrested or tried during the past two years for offenses that left victims robbed of equity dollars or home ownership.

"When someone's called a public notary, you look at them as being a trustworthy public official," said Mike Wood, a Sacramento Police real estate fraud detective. "It lets a lot of people down when it comes out that they're defrauding others."

Investigators say most notaries are honest, but there are exceptions.

One Sacramento notary allowed an impostor with only a Costco card for identification to fraudulently sign over a deed to a home, court records show.

Another Sacramento notary allowed a friend to seize power of attorney from an unsuspecting family member, court records allege. That notary used three pieces of property to secure a \$500,000 bail bond for her boyfriend, records state.

An El Dorado County notary helped a friend falsify her family members' consent to draw equity out of a family home, Deputy District Attorney Dick Jones said.

Of the six local notaries charged, two were convicted of felonies, two of misdemeanors, one case was dismissed, and another is pending.

Statewide, the number of people certified as notaries jumped from fewer than 200,000 in 2003 to nearly

300,000 in 2007, according to the secretary of state's office.

To become a notary, a person must take a six-hour class, pass a 30-question test and sign an oath to follow the law.

Notaries' main job is to identify people signing documents and attest that they are present and sign willingly.

Statewide, one part-time and two full-time investigators from the secretary of state's office look into 300 to 500 complaints from the public and law enforcement each year. The office does not compile data on the number of notaries whose duties are revoked each year.

Of the six local notaries charged with a crime, the secretary of state's office revoked notary powers from one, two resigned, two let their powers expire and one remains active while the case is pending.

When notaries don't do their jobs correctly, the consequences can be steep.

Three sisters each lost about \$80,000 and the Oak Park home where they grew up in a scheme that depended on the participation of a notary.

Pamela Watkins said she and her sisters were shocked to learn in 2005 that the \$350,000 home, which was paid off and then passed on to Watkins and three siblings after their mother's death, had been granted solely to their brother. Its equity had been stripped.

Watkins and her sisters hired a lawyer, did some research and learned that Vallejo notary Sofia L. Rose had attested that the sisters signed over the house at 3:57 p.m. on Dec. 4, 2003.

"We weren't there," Watkins said, adding that one sister's name was misspelled on the deed.

The sisters confronted Rose in 2005, Watkins said.

"She said, 'I remember you,' " Watkins said. "I said, 'I don't know you, I never met you in my life.' "

Rose was charged with three felony counts of filing a forged document and pleaded no contest in September 2006 to one felony fraud count. She was sentenced to a 180-day work project.

Rose, who resigned as a notary, could not be reached; the brother pleaded no contest to filing a forged document and to fraud and was sentenced to a year of jail time and work project, court records show.

Investigators statewide say they're seeing an increase in the number of notaries in handcuffs.

In Los Angeles County, detective Chris Christopher sees notaries wrapped up in plots fit for Hollywood.

He investigated one case in which a "career criminal" convinced a notary to let him use her log book and stamp to swindle property. Eventually, the criminal stole that notary's identity.

In another case, he said, a man went to three notaries, each cooperating as the suspect had another man declared dead and took power of attorney and title to the man's property.

"A notary seal is the most powerful identity theft and fraud tool you will ever find," Christopher

said. "You can bring dead people back to life with it."

Investigators note a common theme when they run across a crooked notary: When the heat is on, the log book disappears.

"Right behind the dishonest notary, then there's the missing journal," said Jeanne Williams, a Sacramento County district attorney's investigator.

A state law went into effect in January that creates penalties for notaries who do not report a missing log book.

The law also allows investigators to review a log book without a warrant and requires a more thorough background check for applicants.

The vast majority of notaries are ethical, said Kelly Rush, spokeswoman for the National Notary Association. Still, the organization highlights arrested notaries in its publications to warn members about the consequences of fraud.

She said the association encourages notaries to know the law and follow it to the letter.

"They really do have a powerful role," Rush said. "They can stop (fraud) in its tracks."

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The Notary Journal: One Of Law Enforcement's Most Potent Weapons Against Mortgage Fraud

A Position Statement From The
NATIONAL NOTARY ASSOCIATION



The Nation's Professional Notary Organization

*"The FBI worked with the Mortgage Bankers Association, the **National Notary Association**, as well as FinCEN,¹ the Department of Housing and Urban Development, and major mortgage lending institutions, to improve the reporting and detection of potential mortgage fraud."*

FBI Director Robert S. Mueller, III
U.S. Senate Intelligence Committee Testimony
February 16, 2005

In the fall of 2004, the Federal Bureau of Investigation approached the National Notary Association to enlist a new ally in its widening war against mortgage fraud. The focus of the Bureau's interest was the journal of notarial acts that almost every state, by statute, requires Notaries to maintain or, by instruction, strongly urges them to do so.²

An October 6, 2004, hearing on mortgage fraud held by the Congressional House Subcommittee on Housing and Community Opportunity had disclosed a sobering statistic:

An estimated 5 to 10 percent of all mortgage loan applications contain some kind of fraud or misrepresentation.

"Based on industry reports and FBI analysis, mortgage fraud is pervasive and growing," testified Chris Swecker, assistant director of the FBI's criminal investigative division at the hearing.

"It's not only increasing, but the types of fraud are becoming more severe," said William Matthews, vice president and general manager of the Mortgage Asset Research Institute, another witness at the October 6 hearing.

Notary Journal: A Proven Tool Of Law Enforcement

The Bureau's interest in the Notary journal as a prosecutorial and fraud-deterrent tool was well justified, because local law enforcement agencies around the nation for decades have used the journal as physical evidence to successfully prosecute and discourage forgers.

Indeed, a three-year (1993-1995) pilot program in California requiring Los Angeles County Notaries to capture the thumbprint of every deed signer in their journals proved so successful in

¹ This is the acronym for the Financial Crimes Enforcement Network.

² In 25 states, statute requires Notaries to keep a record of their notarial acts; in 22 other states, Notary-regulating authorities — through official Notary handbooks or Web site postings — strongly encourage Notaries to keep such a record. See 2004-2005 U.S. NOTARY REFERENCE MANUAL (7th Ed.), published by the National Notary Association.

reducing real property frauds in that county that the requirement was enacted statewide effective January 1, 1996.³ Because fingerprints are unique and unchanging, they are the ultimate identifier. Many would-be forgers, therefore, are reluctant to follow through with their crimes when asked by a Notary to leave a journal print, and Automated Fingerprint Identification Systems (AFIS) often enable law enforcement to match a print with a known criminal in seconds.

Even Notary journals without thumbprints are of great fraud-deterrent value. For example, just having each document signer affix a signature in the Notary journal has a multiple utility:

First, a journal signature provides the Notary with the opportunity to spot a forgery in progress, if the forger appears to be taking an inordinate amount of time or care in making a signature. On the other hand, if the forger doesn't take the time, the forgery may be readily spotted by a signature analyst.

Second, a journal signature discourages signers with second thoughts about a document from claiming they never appeared before the Notary, thus deterring groundless lawsuits.

Third, a journal signature is powerful forensic evidence that a signer was an impostor, especially when coupled with the journal's physical description of the individual.

Even when state law does not require the Notary's journal to contain a signature, a thumbprint, or the serial numbers of ID cards, the journal is still of immense value in both criminal and civil lawsuits in jogging the Notary's memory about notarial acts that were performed years in the past.

Journal Critical In Jogging Notary's Memory

Typically, most criminal and civil lawsuits that hinge on the propriety of a notarization will come to court two to four years after the contested notarial act. In such cases, Notaries are often asked to testify about the facts of a notarization. Without a journal record of pertinent details of the act, however, most Notaries will not be able to recall whom they notarized for or what they notarized even a year in the past, much less two or three years.

To be helpful, each entry in a Notary's journal must include, at least:

- Name and signature of the person whose signature is notarized.
- Date, time and type (e.g., acknowledgment, jurat, etc.) of notarial act performed.
- Title or type of document notarized.
- How the signer was identified⁴ — but no ID serial numbers should be listed, to protect privacy.
- Physical description of the person whose signature is notarized.

³ Based on the success of California State Senator Diane Watson's Senate Bill 1842 of 1992, which established a three-year pilot program requiring deed signers for property in Los Angeles County to leave a thumbprint in the Notary's journal, State Assemblyman Cruz Bustamante's Assembly Bill 1828 of 1995 made this requirement statewide and permanent.

⁴ In general, a document signer is identified by a Notary in one of three ways: (a) through the Notary's personal knowledge of the signer's identity; (b) through the vouching under oath of a "credible witness" who knows the identity of the signer; or (c) through a government-issued "ID card" with, ideally, a photograph, signature and physical description of its bearer.

Record-Keeping Too Important To Be Optional

All publicly commissioned officials should keep at least a minimal record of what they do on the public's behalf. Notarized documents are regularly lost, stolen, shredded or fraudulently tampered with — especially when kept in office files — and the Notary's record may be the only available proof protecting the rights and property of the persons named in or affected by those documents.

Notarial record-keeping is too important to be left to the whim of the Notary. Each state must require its Notaries to keep a record of their official acts.

In this era of proliferating identity theft,⁵ the Notary journal is one of law enforcement's — and the FBI's — most potent weapons against mortgage fraud.

⁵ According to the Federal Trade Commission, complaints about identity theft accounted for 39 percent of the 635, 173 consumer fraud complaints filed with the agency in 2004. This marks the fifth straight year identity theft complaints topped the list of all consumer complaints fielded by the agency.